

WHOLE MILK FOR HEALTHY KIDS ACT OF 2023

—————  
JUNE 30, 2023.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Ms. FOXX, from the Committee on Education and the Workforce,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1147]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 1147) to amend the Richard B. Russell National School Lunch Act to allow schools that participate in the school lunch program under such Act to serve whole milk, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Whole Milk for Healthy Kids Act of 2023”.

**SEC. 2. WHOLE MILK PERMISSIBLE.**

Section 9(a)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—

“(i) shall offer students a variety of fluid milk;

“(ii) may offer students flavored and unflavored whole, reduced-fat, low-fat and fat-free fluid milk and lactose-free fluid milk; and

“(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student’s diet and that specifies the substitute for fluid milk.”; and

(2) by adding at the end the following:

“(D) SATURATED FAT.—Milk fat included in any fluid milk provided under subparagraph (A) shall not be considered saturated fat for purposes of measuring compliance with the allowable average saturated fat content of a meal under section 210.10 of title 7, Code of Federal Regulations (or successor regulations).”.

#### PURPOSE

To amend the Richard B. Russell National School Lunch Act to allow schools that participate in the school lunch program under such Act to serve whole milk.

#### COMMITTEE ACTION

117TH CONGRESS

#### *Second Session—Legislative Action*

On July 20, 2022, Rep. Bobby Scott (D–VA) introduced H.R. 8450, *Healthy Meals, Healthy Kids Act*, with Rep. Suzanne Bonamici (D–OR) as an original cosponsor. The bill was referred solely to the Committee on Education and Labor. On July 27, 2022, the Committee considered H.R. 8450 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 27–20. The Committee considered the following amendments to H.R. 8450:

1. Rep. Lisa McClain (R–MI) and Rep. Russ Fulcher (R–ID) offered—and withdrew—an amendment to ensure potatoes remain allowable as vegetable under the programs.

2. Rep. McClain offered an amendment to prohibit all new changes from being enacted unless an independent study is conducted to ensure the program won’t increase inflation or the changes can be implemented once inflation drops to 2 percent. This amendment was defeated in a roll call vote of 19–27.

3. Rep. Glenn Thompson (R–PA), along with Rep. Elise Stefanik (R–NY), Rep. Fulcher, and Rep. Fred Keller (R–PA), offered an amendment to address whole milk and chocolate milk in school meals and allow greater choice of milk in the Women, Infant and Children (WIC) program. This amendment was defeated by a voice vote.

4. Rep. Stefanik offered an amendment that would address the infant formula contracting requirements in WIC by requiring two manufacturers per state or state consortia. While it received bipartisan support, the amendment failed by roll call vote of 20–24.

5. Rep. Bob Good (R–VA) and Rep. Mary Miller (R–IL) offered—and withdrew—an amendment to require nutrition regulations promulgated under the bill to make grain-based desserts eligible for reimbursement.

6. Rep. Tim Walberg (R–MI) offered an amendment to ensure food substitutions for religious needs are allowed. This amendment was adopted.

7. Rep. Miller and Rep. Good offered an amendment to eliminate the change the Democrats made to the definition of woman and therefore to re-define pregnant woman, breastfeeding woman, and postpartum woman as a woman. This amendment was defeated on a party line vote of 20–25.

8. Rep. Glenn Grothman (R-WI) and Rep. Diana Harshbarger (R-TN) offered an amendment to prohibit enforcement of the May 5, 2022, memo on Title IX enforcement as it relates to child nutrition programs. This amendment was defeated by a roll call vote of 20–25.

9. Rep. Harshbarger offered an amendment to require a feasibility study before issuing new regulations. This study would determine the cost increase these potential standards would impose, the timeline for availability of food meeting these standards, and the increase to plate waste these standards might cause. This amendment was also defeated on a party line vote.

#### 118TH CONGRESS

##### *First Session—Hearing*

On February 8, 2023, the Committee on Education and the Workforce held a hearing on “American Education in Crisis.” The purpose of the hearing was to examine the state of American education, including the needs to add transparency and accountability, to update the education system to serve the needs of students and families, and to protect and restore the rights of parents to have a say in their children’s education, including foods children are served at school. Testifying before the Committee was Ms. Virginia Gentles, Director, Education Freedom Center, Independent Women’s Forum, Arlington, VA; Dr. Monty Sullivan, President, Louisiana Community and Technical College System, Baton Rouge, LA; Mr. Scott Pulsipher, President, Western Governors University, Salt Lake City, UT; and Mr. Jared Polis, Governor, State of Colorado, Denver, CO.

On May 16, 2023, the Committee on Education and the Workforce held a hearing on “Examining the Policies and Priorities of the U.S. Department of Education.” The purpose of the hearing was to review the Fiscal Year 2024 budget priorities of the U.S. Department of Education and discuss the education issues facing America’s students, including food being served at schools. Testifying before the Committee was The Honorable Miguel Cardona, Secretary, U.S. Department of Education, Washington, D.C.

##### *Legislative Action*

On February 21, 2023, Rep. Thompson introduced the *Whole Milk for Healthy Kids Act of 2023* (H.R. 1147) with Reps. Kim Schrier (D-WA), Fulcher, Troy Balderson (R-OH), Mariannette Miller-Meeks (R-IA), David J. Trone (D-MD), Scott Austin (R-GA), Daniel Meusner (R-PA), Doug LaMalfa (R-CA), Llyod Smucker (R-PA), Matt Cartwright (D-PA), Jim Banks (R-IN), James R. Baird (R-IN), Thomas P. Tiffany (R-WI), Josh Gottheimer (D-NJ), Guy Reschenthaler (R-PA), Scott Perry (R-PA), Michael K. Simpson (R-ID), Tom McClintock (R-CA), Tracey Mann (R-KS), Trent Kelly (R-MS), Miller, Mike Kelly (R-PA), Elissa Slotkin (D-MI), Bryan Steil (R-WI), Stefanik, Patrick Ryan (D-NY), Claudia Tenney (R-NY), Scott Fitzgerald (R-WI), Andy Barr (R-KY), Dusty Johnson (R-SD), Paul Tonko (D-NY), Abigail Davis Spanberger (D-VA), Barry Moore (R-AL), Mike Gallagher (R-WI), Randy Feenstra (R-IA), John Joyce (R-PA), and Ben Cline (R-VA). On June 6, 2023,

the Committee considered H.R. 1147 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 26–13. The Committee adopted the following amendment to H.R. 1147:

1. Rep. Thompson offered an Amendment in the Nature of a Substitute (ANS) that provides minor technical changes to help ensure our children’s food service workers have the flexibility they need in serving students milk at lunch meals.

## COMMITTEE VIEWS

### INTRODUCTION

For generations, milk has been recognized as one of the most nutritious options to support a healthy upbringing. Students, parents, school food service providers, and nutritionists all agree that milk in school lunches is wanted and needed. Until Democrat interference in 2010, milk, with its thirteen essential nutrients, was easily accessible in school cafeterias and readily available across all child nutrition programs. Unfortunately, the Biden administration thinks Washington bureaucrats have a better understanding of what students need and has decided to perpetuate Obama-era regulations limiting an essential nutritious choice. In response, this bill addresses the administration’s blockades and helps our nation’s students thrive and learn.

### *Milk faced new regulations with the Healthy, Hunger-free Kids Act of 2010*

Restrictions against milk choice began with the Obama-era *Healthy, Hunger-free Kids Act of 2010*, when President Biden was vice president. While schools have been required to serve meals consistent with the U.S. Department of Agriculture’s (USDA) Dietary Guidelines for Americans (DGA) since the 1994 child nutrition reauthorization (P.L. 103–448), choice and flexibility for school districts and their students were decimated when the Obama administration decided to wage war against milk. The new standards singled out milk—a single food item—to be consistent with the DGA, effectively barring the inclusion of whole and reduced-fat (2 percent) milk in school lunches. The result forced schools to serve only fat-free and low-fat (1 percent) unflavored milk and fat-free flavored milk beginning with SY 2012–2013.

Many schools experienced challenges implementing these changes and reported issues with student acceptance of food. Beginning in FY 2015, Congress, through appropriations, enacted provisions that loosened the milk requirements. In December 2018, USDA published a final rule (effective starting in SY 2019–2020) permitting school food authorities to offer flavored, low-fat (1 percent) milk as a part of school meals and requiring unflavored milk to be served alongside those offerings. However, this effort to restore some flexibility was not enough to satiate students and retain program participation. USDA’s own data shows a steady decline in students eating school meals since the enactment of changes made in the 2010 reauthorization.<sup>1</sup>

<sup>1</sup> <https://www.ers.usda.gov/publications/pub-details/?pubid=43947>; <https://www.ers.usda.gov/publications/pub-details/?pubid=101908>.

*The Biden administration is perpetuating this health concern*

Now the Biden administration continues to impose top-down dietary regulations for schools that further harm student health and does little to support the tireless efforts of food service workers. As if the current limitations are not enough, under the Biden administration USDA has proposed a rule that would subject flavored milk to a new added sugars limit as well as limit the availability of flavored milk to high school students. Elementary and middle school students will continue to be restricted to unflavored fat-free and low-fat milks.

These prescriptive regulations are in effect even as we continue to see negative health consequences from declining milk consumption among students. According to the 2020 Dietary Guidelines Advisory Committee report, between 68 and 76.2 percent of school age males and between 77.4 and 94.3 percent of school age females fail to meet recommended levels of dairy consumption.<sup>2</sup> Additionally, DGA recommends whole milk “be offered beginning around 12 months of age to help meet calcium, potassium, vitamin D, and protein needs,” but this recommendation is removed without substantiation by the time the child is of school age. Furthermore, research has demonstrated that full fat dairy is associated with a neutral or lower risk of heart disease and obesity rather than being the alarming cause of such health concerns.

The Biden administration’s meddling in school nutrition has resulted in distaste for school meals. Restricting milk choices does not satiate students and drives children away from the school lunch program. At a press conference where USDA Secretary Vilsack announced USDA meal regulation changes, one school district food service coordinator said, “We fear that new regulations will push the neediest students away from the programs.”<sup>3</sup>

There is no reason to bar inclusion of popular milk options like whole and reduced-fat milks in school lunches when we know they have the same nutritional benefits as other types of milk. Therefore, H.R. 1147 will expand milk options for school lunches (to include flavored and unflavored whole and reduced-fat milks). While recent reauthorizations and USDA regulations continue to hamper school food authorities with burdensome requirements and limited, costly options at a time of ongoing supply chain challenges, H.R. 1147 allows schools to make choices that are right for the children they serve every day.

Letters of support for H.R. 1147 were received by the Committee from the International Dairy Foods Association, the Nutrition Coalition, the Northeast Dairy Foods and Suppliers Associations, the Wisconsin Cheese Makers Association, the Dairy Institute of California, and 58 organizations represented by the National Milk Producers Federation.

<sup>2</sup>Dietary Guidelines Advisory Committee. 2020. *Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services*. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC. Available at: <https://doi.org/10.52570/DGAC2020>.

<sup>3</sup>[https://urldefense.com/v3/https://www.thefencepost.com/news/vilsack-encounters-resistance-to-school-meal-rule/;!!Bg5easoyC-OII2vIEqY8mTBrtW-N4OJKAQ!OPXvtrVdbkeuAa\\_hOIZBN66BzHJLmzSjRFxjKxu1kCoBKY9THyLeAhkfoErpBT6VZD7pHW2Gg5p3unuteaLVYubIb\\_P-Y\\$](https://urldefense.com/v3/https://www.thefencepost.com/news/vilsack-encounters-resistance-to-school-meal-rule/;!!Bg5easoyC-OII2vIEqY8mTBrtW-N4OJKAQ!OPXvtrVdbkeuAa_hOIZBN66BzHJLmzSjRFxjKxu1kCoBKY9THyLeAhkfoErpBT6VZD7pHW2Gg5p3unuteaLVYubIb_P-Y$).

## CONCLUSION

The Biden administration’s politicization of education must stop. By continuing to wage war on milk, the Biden administration is once again letting Washington bureaucrats dictate every aspect of the school day. Instead, the Committee took action to safeguard the rights of parents and those who serve our nation’s children so they can make the best decisions for our students’ welfare and education. H.R. 1147 expands milk access and variety in school lunches, giving parents and school food service providers the simplicity and flexibility they need to feed students a nutritious beverage. Restricting nutrient-dense foods like milk is returning school meals to the stone age, not creating a bright future for our young people. While more work is needed to improve child nutrition, H.R. 1147 is a positive demonstration of the progress we can achieve when we let sound science, parents, and the tireless professionals that serve our nation’s students lead the way.

## SUMMARY

## H.R. 1147 SECTION-BY-SECTION SUMMARY

*Section 1. Short title*

- Names the bill as the “Whole Milk for Healthy Kids Act of 2023”

*Section 2.*

- Amends the Richard B. Russell National School Lunch Act to:
  - Offer students a variety of fluid milk options without restriction by the Dietary Guidelines for Americans
  - Permits schools to serve students flavored and unflavored whole, reduced-fat, low-fat, fat-free, and lactose-free fluid milk.
  - Requires schools to serve a substitute to fluid milk when a student’s disability restricts their diet which is documented by a licensed physician.
  - Exempts milk fat from being considered saturated fat for purposes of compliance.

## EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

## APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 1147 takes important steps to allow schools that participate in the school lunch program under such Act to serve whole milk.

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the

provisions of the reported bill include unfunded mandates. This issue is addressed in the CBO letter.

#### EARMARK STATEMENT

H.R. 1147 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House rule XXI.

#### ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 06/06/23

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 3 Bill: H.R. 1147 Amendment Number: 1

Disposition: Agreed to by a Full Committee Roll Call Vote 26-13

Sponsor/Amendment: Thompson Motion to Report H.R. 1147 to the House with an amendment with recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (Chairwoman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)			X	Mr. GRIJALVA (AZ)		X	
Mr. THOMPSON (PA)	X			Mr. COURNTEY (CT)	X		
Mr. WALBERG (MI)	X			Mr. SABLAN (MP)			X
Mr. GROTHMAN (WI)	X			Ms. WILSON (FL)			X
Ms. STEFANK (NY)	X			Ms. BONAMICI (OR)		X	
Mr. ALLEN (GA)	X			Mr. TAKANO (CA)		X	
Mr. BANKS (IN)	X			Ms. ADAMS (NC)		X	
Mr. COMER (KY)	X			Mr. DESAULNIER (CA)		X	
Mr. SMUCKER (PA)	X			Mr. NORCROSS (NJ)	X		
Mr. OWENS (UT)	X			Ms. JAYAPAL (WA)		X	
Mr. GOOD (VA)			X	Ms. WILD (PA)	X		
Mrs. MCCLAIN (MI)			X	Ms. MCBATH (GA)		X	
Mrs. MILLER (IL)	X			Mrs. HAYES (CT)	X		
Mrs. STEEL (CA)	X			Ms. OMAR (MN)		X	
Mr. ESTES (KS)	X			Ms. STEVENS (MI)		X	
Ms. LETLOW (LA)	X			Ms. LEGER FERNANDEZ (NM)	X		
Mr. KILEY (CA)	X			Ms. MANNING (NC)		X	
Mr. BEAN (FL)	X			Mr. MRVAN (IN)		X	
Mr. BURLISON (MO)	X			Mr. BOWMAN (NY)		X	
Mr. MORAN (TX)			X				
Mr. JAMES (MI)	X						
Ms. CHAVEZ-DEREMER (OR)	X						
Mr. WILLIAMS (NY)	X						
Ms. HOUCHIN (IN)	X						

TOTALS: Ayes: 26

Nos: 13

Not Voting: 6

Total: 45 / Quorum: / Report:

(25 R - 20 D)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House rule XIII, the goal of H.R. 1147, the Whole Milk for Healthy Kids Act of 2023, is to allow schools that participate in the school lunch program under the Richard B. Russell National School Lunch Act to serve a variety of milk options, including whole milk.

## DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1147 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee's oversight findings and recommendations are reflected in the body of this report.

## REQUIRED COMMITTEE HEARING AND RELATED HEARINGS

In compliance with clause 3(c)(6) of rule XIII the following hearings held during the 118th Congress were used to develop or consider H.R. 1147: On February 8, 2023, the Committee held a hearing on “American Education in Crisis” and on May 16, 2023, the Committee held a hearing on “Examining the Policies and Priorities of the U.S. Department of Education.”

## NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the committee has received the following estimate for H.R. 1147 from the Director of the Congressional Budget Office:

<b>H.R. 1147, Whole Milk for Healthy Kids Act of 2023</b>			
As ordered reported by the House Committee on Education and the Workforce on June 6, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
<b>Mandate Effects</b>			
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1147 would allow schools that participate in the National School Lunch Program to serve whole or reduced-fat milk that is flavored or unflavored to students. Under current law, schools must offer milk that is fat-free or low-fat and may only offer flavored milk if it is fat-free. The bill also would exclude the saturated fat in milk from the amount that is allowed under the program for an average meal.

CBO expects that enacting the bill would not affect reimbursement rates or participation in the program, so there would be no effect on the cost of benefits. CBO estimates that the administrative costs to update the dietary regulations would be insignificant; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Susan Beyer. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 1147. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT**

\* \* \* \* \*

NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

SEC. 9. (a)(1)(A) Lunches served by schools participating in the school lunch program under this Act shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements—

(i) shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students; and

(ii) shall, at a minimum, be based on the weekly average of the nutrient content of school lunches.

(B) The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this Act, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.

(2) FLUID MILK.—

[(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—

[(i) shall offer students a variety of fluid milk. Such milk shall be consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

[(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

[(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.]

(A) *IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—*

*(i) shall offer students a variety of fluid milk;*

*(ii) may offer students flavored and unflavored whole, reduced-fat, low-fat and fat-free fluid milk and lactose-free fluid milk; and*

*(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.*

(B) SUBSTITUTES.—

(i) STANDARDS FOR SUBSTITUTION.—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally

equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary, include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

(ii) NOTICE.—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

(iii) EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this Act shall be paid by the school food authority.

(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.—A school that participates in the school lunch program under this Act shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

(i) on the school premises; or

(ii) at any school-sponsored event.

(D) SATURATED FAT.—*Milk fat included in any fluid milk provided under subparagraph (A) shall not be considered saturated fat for purposes of measuring compliance with the allowable average saturated fat content of a meal under section 210.10 of title 7, Code of Federal Regulations (or successor regulations).*

(3) Students in senior high schools that participate in the school lunch program under this Act (and, when approved by the local school district or nonprofit private schools, students in any other grade level) shall not be required to accept offered foods they do not intend to consume, and any such failure to accept offered foods shall not affect the full charge to the student for a lunch meeting the requirements of this subsection or the amount of payments made under this Act to any such school for such lunch.

(4) PROVISION OF INFORMATION.—

(A) GUIDANCE.—Prior to the beginning of the school year beginning July 2004, the Secretary shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

(B) RULES.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall promulgate

rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(C) PROCUREMENT AND PROCESSING OF FOOD SERVICE PRODUCTS AND COMMODITIES.—The Secretary shall—

(i) identify, develop, and disseminate to State departments of agriculture and education, school food authorities, local educational agencies, and local processing entities, model product specifications and practices for foods offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to ensure that the foods reflect the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(ii) not later than 1 year after the date of enactment of this subparagraph—

(I) carry out a study to analyze the quantity and quality of nutritional information available to school food authorities about food service products and commodities; and

(II) submit to Congress a report on the results of the study that contains such legislative recommendations as the Secretary considers necessary to ensure that school food authorities have access to the nutritional information needed for menu planning and compliance assessments; and

(iii) to the maximum extent practicable, in purchasing and processing commodities for use in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), purchase the widest variety of healthful foods that reflect the most recent Dietary Guidelines for Americans.

(5) WATER.—Schools participating in the school lunch program under this Act shall make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.

(b)(1)(A) Not later than June 1 of each fiscal year, the Secretary shall prescribe income guidelines for determining eligibility for free and reduced price lunches during the 12-month period beginning July 1 of such fiscal year and ending June 30 of the following fiscal year. The income guidelines for determining eligibility for free lunches shall be 130 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in ac-

cordance with subparagraph (B). The Office of Management and Budget guidelines shall be revised at annual intervals, or at any shorter interval deemed feasible and desirable.

(B) The revision required by subparagraph (A) of this paragraph shall be made by multiplying—

(i) the official poverty line (as defined by the Office of Management and Budget); by

(ii) the percentage change in the Consumer Price Index during the annual or other interval immediately preceding the time at which the adjustment is made.

Revisions under this subparagraph shall be made not more than 30 days after the date on which the consumer price index data required to compute the adjustment becomes available.

(2)(A) Following the determination by the Secretary under paragraph (1) of this subsection of the income eligibility guidelines for each school year, each State educational agency shall announce the income eligibility guidelines, by family size, to be used by schools in the State in making determinations of eligibility for free and reduced price lunches. Local school authorities shall, each year, publicly announce the income eligibility guidelines for free and reduced price lunches on or before the opening of school.

(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

(i) IN GENERAL.—Applications for free and reduced price lunches, in such form as the Secretary may prescribe or approve, and any descriptive material, shall be distributed to the parents or guardians of children in attendance at the school, and shall contain only the family size income levels for reduced price meal eligibility with the explanation that households with incomes less than or equal to these values would be eligible for free or reduced price lunches.

(ii) INCOME ELIGIBILITY GUIDELINES.—Forms and descriptive material distributed in accordance with clause (i) may not contain the income eligibility guidelines for free lunches.

(iii) CONTENTS OF DESCRIPTIVE MATERIAL.—

(I) IN GENERAL.—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

(II) PROGRAMS.—The programs referred to in subclause (I)(aa) are—

(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

(bb) the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(cc) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and

(dd) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(3) HOUSEHOLD APPLICATIONS.—

(A) DEFINITION OF HOUSEHOLD APPLICATION.—In this paragraph, the term “household application” means an application for a child of a household to receive free or reduced price school lunches under this Act, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

(B) ELIGIBILITY DETERMINATION.—

(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

(I) the application is submitted electronically; and

(II) the electronic application filing system meets confidentiality standards established by the Secretary.

(C) CHILDREN IN HOUSEHOLD.—

(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency may not request a separate application for each child in the household that attends schools under the same local educational agency.

(D) VERIFICATION OF SAMPLE.—

(i) DEFINITIONS.—In this subparagraph:

(I) ERROR PRONE APPLICATION.—The term “error prone application” means an approved household application that—

(aa) indicates monthly income that is within \$100, or an annual income that is within \$1,200, of the income eligibility limitation for free or reduced price meals; or

(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

(II) NON-RESPONSE RATE.—The term “non-response rate” means (in accordance with guidelines established by the Secretary) the percentage of ap-

proved household applications for which verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

(iii) SAMPLE SIZE.—Except as otherwise provided in this paragraph, the sample for a local educational agency for a school year shall equal the lesser of—

(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

(iv) ALTERNATIVE SAMPLE SIZE.—

(I) IN GENERAL.—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

(II) 3,000/3 PERCENT OPTION.—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

(III) 1,000/1 PERCENT PLUS OPTION.—

(aa) IN GENERAL.—The sample size described in this subclause shall be the sum of—

(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

(BB) the lesser of 500, or  $\frac{1}{2}$  of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

(bb) PROGRAMS.—The programs described in this item are—

(AA) the supplemental nutrition assistance program established under the Food

and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(BB) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and

(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for a local educational agency for a school year if—

(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

(E) PRELIMINARY REVIEW.—

(i) REVIEW FOR ACCURACY.—

(I) IN GENERAL.—Prior to conducting any other verification activity for approved household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the ini-

tial eligibility determination, unless otherwise determined by the Secretary.

(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

(ii) CORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

(iii) INCORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

(I) correct the eligibility status of the household;

(II) notify the household of the change;

(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

(F) DIRECT VERIFICATION.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

(I) the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(II) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b));

(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

or

(V) a similar income-tested program or other source of information, as determined by the Secretary.

(ii) FREE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility

for free meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(1)(2)(C) of that Act (42 U.S.C. 1396a(1)(2)(C)) is not more than 133 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)).

(iii) REDUCED PRICE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(1)(2)(C) of that Act (42 U.S.C. 1396a(1)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)).

(iv) EVALUATION.—Not later than 3 years after the date of enactment of this subparagraph, the Secretary shall complete an evaluation of—

(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring

that adequate verification information is obtained; and

(II) the feasibility of direct verification by State agencies and local educational agencies.

(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that direct verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

(G) HOUSEHOLD VERIFICATION.—

(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

(I) the approved household application has been selected for verification; and

(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

(H) VERIFICATION DEADLINE.—

(i) GENERAL DEADLINE.—

(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year for

a local educational agency to December 15 of the school year.

(ii) ELIGIBILITY CHANGES.—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made for household applications in accordance with criteria established by the Secretary.

(I) LOCAL CONDITIONS.—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

(i) the sample size and sample selection criteria established under subparagraph (D); and

(ii) the verification deadline established under subparagraph (H).

(J) INDIVIDUAL REVIEW.—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

(ii) replace the approved household applications with other approved household applications to be verified.

(K) FEASIBILITY STUDY.—

(i) IN GENERAL.—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

(I) overcertification errors in the school lunch program under this Act;

(II) waste, fraud, and abuse in connection with this paragraph; and

(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

(ii) REPORT.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(I) the results of the feasibility study conducted under this subsection;

(II) how a computer system using technology described in clause (i) could be implemented;

(III) a plan for implementation; and

(IV) proposed legislation, if necessary, to implement the system.

(4) DIRECT CERTIFICATION FOR CHILDREN IN SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS.—

(A) IN GENERAL.—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the supplemental nutrition assistance program shall be certified as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations for a school lunch program under this Act and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who is a member of a household receiving assistance under the supplemental nutrition assistance program as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(D) APPLICABILITY.—This paragraph applies to—

- (i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;
- (ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and
- (iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.

(E) PERFORMANCE AWARDS.—

(i) IN GENERAL.—Effective for each of the school years beginning July 1, 2011, July 1, 2012, and July 1, 2013, the Secretary shall offer performance awards to States to encourage the States to ensure that all children eligible for direct certification under this paragraph are certified in accordance with this paragraph.

(ii) REQUIREMENTS.—For each school year described in clause (i), the Secretary shall—

(I) consider State data from the prior school year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a); and

(II) make performance awards to not more than 15 States that demonstrate, as determined by the Secretary—

- (aa) outstanding performance; and
- (bb) substantial improvement.

(iii) USE OF FUNDS.—A State agency that receives a performance award under clause (i)—

- (I) shall treat the funds as program income; and
- (II) may transfer the funds to school food authorities for use in carrying out the program.

(iv) FUNDING.—

(I) IN GENERAL.—On October 1, 2011, and each subsequent October 1 through October 1, 2013, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary—

(aa) \$2,000,000 to carry out clause (ii)(II)(aa); and

(bb) \$2,000,000 to carry out clause (ii)(II)(bb).

(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this clause the funds transferred under subclause (I), without further appropriation.

(v) PAYMENTS NOT SUBJECT TO JUDICIAL REVIEW.—A determination by the Secretary whether, and in what amount, to make a performance award under this subparagraph shall not be subject to administrative or judicial review.

(F) CONTINUOUS IMPROVEMENT PLANS.—

(i) DEFINITION OF REQUIRED PERCENTAGE.—In this subparagraph, the term “required percentage” means—

(I) for the school year beginning July 1, 2011, 80 percent;

(II) for the school year beginning July 1, 2012, 90 percent; and

(III) for the school year beginning July 1, 2013, and each school year thereafter, 95 percent.

(ii) REQUIREMENTS.—Each school year, the Secretary shall—

(I) identify, using data from the prior year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a), States that directly certify less than the required percentage of the total number of children in the State who are eligible for direct certification under this paragraph;

(II) require the States identified under subclause (I) to implement a continuous improvement plan to fully meet the requirements of this paragraph, which shall include a plan to improve direct certification for the following school year; and

(III) assist the States identified under subclause (I) to develop and implement a continuous improvement plan in accordance with subclause (II).

(iii) FAILURE TO MEET PERFORMANCE STANDARD.—

(I) IN GENERAL.—A State that is required to develop and implement a continuous improvement plan under clause (ii)(II) shall be required to submit the continuous improvement plan to the Secretary, for the approval of the Secretary.

(II) REQUIREMENTS.—At a minimum, a continuous improvement plan under subclause (I) shall include—

(aa) specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases;

(bb) a timeline for the State to implement those measures; and

(cc) goals for the State to improve direct certification results.

(G) WITHOUT FURTHER APPLICATION.—

(i) IN GENERAL.—In this paragraph, the term “without further application” means that no action is required by the household of the child.

(ii) CLARIFICATION.—A requirement that a household return a letter notifying the household of eligibility for direct certification or eligibility for free school meals does not meet the requirements of clause (i).

(5) DISCRETIONARY CERTIFICATION.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

(A) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(B) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));

(C) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);

(D) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)); or

(E)(i) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

(ii) a foster child who a court has placed with a caretaker household.

(6) USE OR DISCLOSURE OF INFORMATION.—

(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

(i) a person directly connected with the administration or enforcement of this Act or the Child Nutrition

Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either Act);

(ii) a person directly connected with the administration or enforcement of—

(I) a Federal education program;

(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this Act;

(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

(II) verifying the eligibility of children for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(v) a third party contractor described in paragraph (3)(G)(iv).

(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational

agency or school food authority acting in accordance with that option—

(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

(7) FREE AND REDUCED PRICE POLICY STATEMENT.—

(A) IN GENERAL.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this Act unless there is a substantive change in the free and reduced price policy of the local educational agency.

(B) ROUTINE CHANGE.—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

(8) COMMUNICATIONS.—

(A) IN GENERAL.—Any communication with a household under this subsection or subsection (d) shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(B) ELECTRONIC AVAILABILITY.—In addition to the distribution of applications and descriptive material in paper form as provided for in this paragraph, the applications and material may be made available electronically via the Internet.

(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

(A) FREE LUNCHES.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), shall be served a free lunch.

(B) REDUCED PRICE LUNCHES.—

(i) IN GENERAL.—Any child who is a member of a household whose income, at the time the application is

submitted, is at an annual rate greater than the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), but less than or equal to the applicable family size income level of the income eligibility guidelines for reduced price lunches, as determined under paragraph (1), shall be served a reduced price lunch.

(ii) MAXIMUM PRICE.—The price charged for a reduced price lunch shall not exceed 40 cents.

(C) DURATION.—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 11(a), eligibility for free or reduced price meals for any school year shall remain in effect—

(i) beginning on the date of eligibility approval for the current school year; and

(ii) ending on a date during the subsequent school year determined by the Secretary.

(10) No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch under this subsection shall be made by the school nor shall there be any overt identification of any child by special tokens or tickets, announced or published list of names, or by other means.

(11) Any child who has a parent or guardian who (A) is responsible for the principal support of such child and (B) is unemployed shall be served a free or reduced price lunch, respectively, during any period (i) in which such child's parent or guardian continues to be unemployed and (ii) the income of the child's parents or guardians during such period of unemployment falls within the income eligibility criteria for free lunches or reduced price lunches, respectively, based on the current rate of income of such parents or guardians. Local educational agencies shall publicly announce that such children are eligible for free or reduced price lunch, and shall make determinations with respect to the status of any parent or guardian of any child under clauses (A) and (B) of the preceding sentence on the basis of a statement executed in such form as the Secretary may prescribe by such parent or guardian. No physical segregation of, or other discrimination against, any child eligible for a free or reduced price lunch under this paragraph shall be made by the school nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or by any other means.

(12)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is—

(i) a member of a household receiving assistance under the supplemental nutrition assistance program authorized under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(ii) a member of a family (under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(iii) enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child meets the eligibility criteria prescribed under section 645(a)(1)(B) of the Head Start Act (42 U.S.C. 9840(a)(1)(B));

(iv) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));

(v) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);

(vi) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)); or

(vii)(I) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

(II) a foster child who a court has placed with a caretaker household.

(B) Proof of receipt of supplemental nutrition assistance program benefits or assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii), shall be sufficient to satisfy any verification requirement imposed under this subsection.

(13) EXCLUSION OF CERTAIN MILITARY HOUSING ALLOWANCES.—The amount of a basic allowance provided under section 403 of title 37, United States Code, on behalf of a member of a uniformed service for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10, United States Code, or any related provision of law, shall not be considered to be income for the purpose of determining the eligibility of a child who is a member of the household of the member of a uniformed service for free or reduced price lunches under this Act.

(14) COMBAT PAY.—

(A) DEFINITION OF COMBAT PAY.—In this paragraph, the term “combat pay” means any additional payment under chapter 5 of title 37, United States Code, or otherwise designated by the Secretary to be appropriate for exclusion under this paragraph, that is received by or from a member of the United States Armed Forces deployed to a designated combat zone, if the additional pay—

(i) is the result of deployment to or service in a combat zone; and

(ii) was not received immediately prior to serving in a combat zone.

(B) EXCLUSION.—Combat pay shall not be considered to be income for the purpose of determining the eligibility for free or reduced price meals of a child who is a member of

the household of a member of the United States Armed Forces.

(15) DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.—

(A) DEFINITIONS.—In this paragraph:

(i) ELIGIBLE CHILD.—The term “eligible child” means a child—

(I)(aa) who is eligible for and receiving medical assistance under the Medicaid program; and

(bb) who is a member of a family with an income as measured by the Medicaid program before the application of any expense, block, or other income disregard, that does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by such section)) applicable to a family of the size used for purposes of determining eligibility for the Medicaid program; or

(II) who is a member of a household (as that term is defined in section 245.2 of title 7, Code of Federal Regulations (or successor regulations) with a child described in subclause (I).

(ii) MEDICAID PROGRAM.—The term “Medicaid program” means the program of medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(B) DEMONSTRATION PROJECT.—

(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service and in cooperation with selected State agencies, shall conduct a demonstration project in selected local educational agencies to determine whether direct certification of eligible children is an effective method of certifying children for free lunches and breakfasts under section 9(b)(1)(A) of this Act and section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A)).

(ii) SCOPE OF PROJECT.—The Secretary shall carry out the demonstration project under this subparagraph—

(I) for the school year beginning July 1, 2012, in selected local educational agencies that collectively serve 2.5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data;

(II) for the school year beginning July 1, 2013, in selected local educational agencies that collectively serve 5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data; and

(III) for the school year beginning July 1, 2014, and each subsequent school year, in selected local educational agencies that collectively serve 10 percent of students certified for free and reduced

price meals nationwide, based on the most recent available data.

(iii) PURPOSES OF THE PROJECT.—At a minimum, the purposes of the demonstration project shall be—

(I) to determine the potential of direct certification with the Medicaid program to reach children who are eligible for free meals but not certified to receive the meals;

(II) to determine the potential of direct certification with the Medicaid program to directly certify children who are enrolled for free meals based on a household application; and

(III) to provide an estimate of the effect on Federal costs and on participation in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) of direct certification with the Medicaid program.

(iv) COST ESTIMATE.—For each of 2 school years of the demonstration project, the Secretary shall estimate the cost of the direct certification of eligible children for free school meals through data derived from—

(I) the school meal programs authorized under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(II) the Medicaid program; and

(III) interviews with a statistically representative sample of households.

(C) AGREEMENT.—

(i) IN GENERAL.—Not later than July 1 of the first school year during which a State agency will participate in the demonstration project, the State agency shall enter into an agreement with the 1 or more State agencies conducting eligibility determinations for the Medicaid program.

(ii) WITHOUT FURTHER APPLICATION.—Subject to paragraph (6), the agreement described in subparagraph (D) shall establish procedures under which an eligible child shall be certified for free lunches under this Act and free breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), without further application (as defined in paragraph (4)(G)).

(D) CERTIFICATION.—For the school year beginning on July 1, 2012, and each subsequent school year, subject to paragraph (6), the local educational agencies participating in the demonstration project shall certify an eligible child as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application (as defined in paragraph (4)(G)).

(E) SITE SELECTION.—

(i) IN GENERAL.—To be eligible to participate in the demonstration project under this subsection, a State agency shall submit to the Secretary an application at

such time, in such manner, and containing such information as the Secretary may require.

(ii) CONSIDERATIONS.—In selecting States and local educational agencies for participation in the demonstration project, the Secretary may take into consideration such factors as the Secretary considers to be appropriate, which may include—

(I) the rate of direct certification;

(II) the share of individuals who are eligible for benefits under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) who participate in the program, as determined by the Secretary;

(III) the income eligibility limit for the Medicaid program;

(IV) the feasibility of matching data between local educational agencies and the Medicaid program;

(V) the socioeconomic profile of the State or local educational agencies; and

(VI) the willingness of the State and local educational agencies to comply with the requirements of the demonstration project.

(F) ACCESS TO DATA.—For purposes of conducting the demonstration project under this paragraph, the Secretary shall have access to—

(i) educational and other records of State and local educational and other agencies and institutions receiving funding or providing benefits for 1 or more programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(ii) income and program participation information from public agencies administering the Medicaid program.

(G) REPORT TO CONGRESS.—

(i) IN GENERAL.—Not later than October 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, an interim report that describes the results of the demonstration project required under this paragraph.

(ii) FINAL REPORT.—Not later than October 1, 2015, the Secretary shall submit a final report to the committees described in clause (i).

(H) FUNDING.—

(i) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out subparagraph (G) \$5,000,000, to remain available until expended.

(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to

carry out subparagraph (G) the funds transferred under clause (i), without further appropriation.

(c) School lunch programs under this Act shall be operated on a nonprofit basis. Commodities purchased under the authority of section 32 of the Act of August 24, 1935, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school lunch program under this Act as well as to other schools carrying out nonprofit school lunch programs and institutions authorized to receive such commodities. The requirements of this section relating to the service of meals without cost or at a reduced cost shall apply to the lunch program of any school utilizing commodities donated under any provision of law.

(d)(1) The Secretary shall require as a condition of eligibility for receipt of free or reduced price lunches that the member of the household who executes the application furnish the last 4 digits of the social security account number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary.

(2) No member of a household may be provided a free or reduced price lunch under this Act unless—

(A) appropriate documentation relating to the income of such household (as prescribed by the Secretary) has been provided to the appropriate local educational agency so that the local educational agency may calculate the total income of such household;

(B) documentation showing that the household is participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 has been provided to the appropriate local educational agency;

(C) documentation has been provided to the appropriate local educational agency showing that the family is receiving assistance under the State program funded under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A);

(E) documentation has been provided to the appropriate local educational agency showing the status of the child as a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399));

(F)(i) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

(ii) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child who a court has placed with a caretaker household; or

(G) documentation has been provided to the appropriate local educational agency showing the status of the child as an eligible child (as defined in subsection (b)(15)(A)).

(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price, and full-price reimbursable meals to all eligible children.

(f) NUTRITIONAL REQUIREMENTS.—

(1) IN GENERAL.—Schools that are participating in the school lunch program or school breakfast program shall serve lunches and breakfasts that—

(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

(B) consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity.

(2) To assist schools in meeting the requirements of this subsection, the Secretary—

(A) shall—

(i) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

(ii) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and food-based menu systems; and

(B) may provide to schools information regarding other approaches, as determined by the Secretary.

(3) USE OF ANY REASONABLE APPROACH.—

(A) IN GENERAL.—A school food service authority may use any reasonable approach, within guidelines established by the Secretary in a timely manner, to meet the requirements of this subsection, including—

(i) using the school nutrition meal pattern in effect for the 1994–1995 school year; and

(ii) using any of the approaches described in paragraph

(3).

(B) NUTRIENT ANALYSIS.—The Secretary may not require a school to conduct or use a nutrient analysis to meet the requirements of this subsection.

(4) WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.—During the period ending on September 30, 2010, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a meal offered or served under the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(g) Not later than 1 year after the date of enactment of this subsection, the Secretary shall provide a notification to Congress that justifies the need for production records required under section 210.10(b) of title 7, Code of Federal Regulations, and describes how the Secretary has reduced paperwork relating to the school lunch and school breakfast programs.

## (h) FOOD SAFETY.—

(1) IN GENERAL.—A school participating in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall—

(A) at least twice during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) on request, provide a copy of the report to a member of the public.

(2) STATE AND LOCAL GOVERNMENT INSPECTIONS.—Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

(3) AUDITS AND REPORTS BY STATES.—For fiscal year 2023, each State shall annually—

(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) submit to the Secretary a report of the results of the audit.

(4) AUDIT BY THE SECRETARY.—For fiscal year 2023, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

(5) SCHOOL FOOD SAFETY PROGRAM.—

(A) IN GENERAL.—Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.

(B) APPLICABILITY.—Subparagraph (A) shall apply to any facility or part of a facility in which food is stored, prepared, or served for the purposes of the school nutrition programs under this Act or section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

## (i) SINGLE PERMANENT AGREEMENT BETWEEN STATE AGENCY AND SCHOOL FOOD AUTHORITY; COMMON CLAIMS FORM.—

(1) IN GENERAL.—If a single State agency administers any combination of the school lunch program under this Act, the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the summer food service program for children under section 13 of this Act, or the child and adult care food program under section 17 of this Act, the agency shall—

(A) require each school food authority to submit to the State agency a single agreement with respect to the operation by the authority of the programs administered by the State agency; and

(B) use a common claims form with respect to meals and supplements served under the programs administered by the State agency.

(2) ADDITIONAL REQUIREMENT.—The agreement described in paragraph (1)(A) shall be a permanent agreement that may be amended as necessary.

(j) PURCHASES OF LOCALLY PRODUCED FOODS.—The Secretary shall—

(1) encourage institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to purchase unprocessed agricultural products, both locally grown and locally raised, to the maximum extent practicable and appropriate;

(2) advise institutions participating in a program described in paragraph (1) of the policy described in that paragraph and paragraph (3) and post information concerning the policy on the website maintained by the Secretary; and

(3) allow institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), including the Department of Defense Fresh Fruit and Vegetable Program, to use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised.

(k) INFORMATION ON THE SCHOOL NUTRITION ENVIRONMENT.—

(1) IN GENERAL.—The Secretary shall—

(A) establish requirements for local educational agencies participating in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to report information about the school nutrition environment, for all schools under the jurisdiction of the local educational agencies, to the Secretary and to the public in the State on a periodic basis; and

(B) provide training and technical assistance to States and local educational agencies on the assessment and reporting of the school nutrition environment, including the use of any assessment materials developed by the Secretary.

(2) REQUIREMENTS.—In establishing the requirements for reporting on the school nutrition environment under paragraph (1), the Secretary shall—

(A) include information pertaining to food safety inspections, local wellness policies, meal program participation, the nutritional quality of program meals, and other information as determined by the Secretary; and

(B) ensure that information is made available to the public by local educational agencies in an accessible, easily understood manner in accordance with guidelines established by the Secretary.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.

(l) FOOD DONATION PROGRAM.—

(1) IN GENERAL.—Each school and local educational agency participating in the school lunch program under this Act may donate any food not consumed under such program to eligible local food banks or charitable organizations.

(2) GUIDANCE.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall develop and publish guidance to schools and local educational agencies participating in the school lunch program under this Act to assist such schools and local educational agencies in donating food under this subsection.

(B) UPDATES.—The Secretary shall update such guidance as necessary.

(3) LIABILITY.—Any school or local educational agency making donations pursuant to this subsection shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791).

(4) DEFINITION.—In this subsection, the term “eligible local food banks or charitable organizations” means any food bank or charitable organization which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

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## MINORITY VIEWS

### INTRODUCTION

H.R. 1147, the *Whole Milk for Healthy Kids Act of 2023*, removes the requirement for milk to be served in the National School Lunch Program consistent with the Dietary Guidelines for Americans (DGAs), a federally established, evidence-based comprehensive set of recommendations on nutrition. In making nutrition policy, it is important to maintain the unbiased process to ensure that children receive the most nutritious meals possible, free from political interests and interference. H.R. 1147 sets a precedent of Congress legislating the foods served in schools, even if such legislation would contradict evidence-based recommendations of the DGAs. Further, H.R. 1147 runs contrary to the Committee's long-standing bipartisan practice of not considering standalone child nutrition legislation outside of a full reauthorization of federal child nutrition programs. The bill is opposed by organizations such as National WIC Association, the Center for Science in the Public Interest, the Physicians Committee for Responsible Medicine, and the American Heart Association. Further, the American Public Health Association, and over 60 other organizations have expressed concerns about attempts to bring whole milk back into the school meals program.<sup>1</sup>

### CHILD NUTRITION PROGRAMS SUPPORT CHILDREN'S HEALTH AND DEVELOPMENT

Federal child nutrition programs such as the National School Lunch Program (NSLP) provide many school-aged children with up to half their daily calories.<sup>2</sup> Research has shown that nutrition plays a key role in the health and academic outcomes of children,<sup>3</sup> making it vital that school meals are as nutritious as possible. Strong nutrition standards for the foods and beverages provided through federal child nutrition programs are especially important for improving health equity. Black, Hispanic, and American Indian and Alaska Native communities are often disproportionately im-

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<sup>1</sup> Cf. Letter to Sens. Murray, Heinrich, Collins, and Hoeven & Reps. Granger, Harris, Delauro and Bishop from over 60 organizations opposing changes to weaken nutrition standards in the Fiscal Year (FY) 2024 appropriations process, Mar. 12, 2023 ("Further, we are similarly concerned about attempts to bring whole milk into the school meals program. The Dietary Guidelines is explicit in its recommendation that everyone 2 years and older should limit their intake of saturated fat and choose fat-free or 1-percent low-fat milk instead of 2-percent reduced-fat or whole milk. The proposed rule reiterates this, while providing flexibilities for flavored 1-percent milk. Yet continued industry attempts to circumvent the science persist.") (on file with author).

<sup>2</sup> Lindsay Miller et al., Rapid Health Impact Assessment on Changes to School Nutrition Standards to Align with 2020–2025 Dietary Guidelines for Americans 2, (2023), <https://healthyeatingresearch.org/wp-content/uploads/2023/02/HER-Health-Impact-Assessment-FIN.pdf>.

<sup>3</sup> See, e.g., Howard Taras, Nutrition and Student Performance at School, 75 J. of Sch. Health 199, 199–213 (2005); Debbie MacLellan et al., Food Intake and Academic Performance Among Adolescents, 69 Can. J. of Dietetic Practice & Rsch. 141, (2008).

pacted by food insecurity.<sup>4</sup> Additionally, strong nutrition standards have a demonstrated positive health impact on children; the previous update to the school meal patterns, more than a decade ago, led to increased consumption of fruits, vegetables, and whole grain-rich foods, and reduced consumption of saturated fat and sodium.<sup>5</sup>

#### *Milk Can Provide Important Nutrition for Children*

Milk is an important source of protein and contains carbohydrates and fats.<sup>6</sup> Along with macronutrients important for children’s growth and development, milk is also a source of calcium and is fortified to provide vitamins A and D.<sup>7</sup> The most recent DGAs, for 2020–2025, state that healthy dietary patterns include fat-free and low-fat (1%) milk, yogurt, and cheese, for children two years and older.<sup>8</sup> Recognizing the nutritional benefits that milk can provide, regulation requires that unflavored milk be offered at each school meal service.<sup>9</sup> While the meal program actively promotes milk consumption, researchers have found that national dairy fluid milk consumption declines with age; this decline is part of a longer-term decline that has been occurring since 1975, when the U.S. Department of Agriculture (USDA) began tracking annual consumption of milk, cheese, and other dairy products.<sup>10</sup>

#### CURRENT STATUTORY AND REGULATORY FRAMEWORK OF NUTRITION STANDARDS RELIES ON SCIENCE

Since the authorization of the NSLP in 1946, the federal government has been responsible for the nutritional requirements in school meals. While nutritional requirements are not outlined in statute, current law requires the USDA Secretary to provide “minimum nutritional requirements” founded on “tested nutritional research.”<sup>11</sup> Current law also requires school meals to be “consistent with the goals” of the latest dietary guidelines.<sup>12</sup> The DGAs are formed through an advisory committee of experts appointed to review scientific evidence on nutrition and health and consider public

<sup>4</sup> Alisha Coleman-Jensen et al., Household Food Security in the United States in 2020, 20 (U.S.D.A. ERS 2021), <https://www.ers.usda.gov/webdocs/publications/102076/err-298.pdf>; Valarie Blue Bird Jernigan et al., Food Insecurity among American Indians and Alaska Natives: A National Profile Using the Current Population Survey—Food Security Supplement, 12 *J. Hunger Environ. Nutr.* 1 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5422031/pdf/nihms827391.pdf>.

<sup>5</sup> Janelle Chaves, Changes to US school meal program helped reduce BMI in children and teens, study says, CNN (Feb. 13, 2023), <https://www.cnn.com/2023/02/13/health/school-meals-bmi-study-wellness/index.html>; Aruna Chandran et al., Changes in Body Mass Index among School-Aged Youths Following Implementation of the Healthy, Hunger-Free Kids Act of 2010, 177 *JAMA Pediatrics* 401, (2023), <https://doi.org/10.1001/jamapediatrics.2022.5828>.

<sup>6</sup> Paula C. Pereira, Milk nutritional composition and its role in human health, 30 *Nutri.* 619 (2014).

<sup>7</sup> U.S. Dept. of Agriculture & U.S. Dept. of Health & Hum. Svcs., Dietary Guidelines for Americans, 2020–2025 60, (9th ed. 2020), [https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf).

<sup>8</sup> *Id.* at 88. The DGAs recommend: 2-2½ cups or the equivalent per day of dairy for children ages 2 through 8 (based on caloric intake of 1,000–2,000 calories per day); and 3 cups or the equivalent per day of dairy for children ages 9 through 18 (based on caloric intake of 1,400–3,200 calories per day).

<sup>9</sup> C.F.R. § 210.10(c).

<sup>10</sup> Dave Natzke, Growth Industry: Dairy Product Consumption Measures Up, Ag Proud (Oct. 26, 2022), <https://www.agproud.com/articles/56206-growth-industry-dairy-product-consumption-measures-up>.

<sup>11</sup> Richard B. Russell National School Lunch Act, 42 U.S.C. § 1758(a)(1)(A).

<sup>12</sup> Richard B. Russell National School Lunch Act, 42 U.S.C. § 1758(f).

comments in the establishment of the DGAs.<sup>13</sup> USDA establishes detailed nutritional requirements for school meal programs through regulations on a periodic basis consistent with the most recent DGAs.<sup>14</sup> Specific nutrition standards for foods and beverages served in the NSLP are not written in statute. This is specifically to allow for adaptations in line with the latest science and expert recommendations. The framework also ensures that standards are developed apolitically and are largely independent of the legislative branch.

Whole milk<sup>15</sup> and reduced-fat (2%) milk (flavored or unflavored) have not been permitted in school meals for over a decade. In 2012, updated regulations requiring school food authorities (SFAs) to offer unflavored low-fat (1%) and flavored fat-free milk were issued under the Obama Administration pursuant to the bipartisan *Healthy, Hunger-Free Kids Act of 2010*.<sup>16</sup> Congressional and administrative actions resulted in low-fat (1%) flavored milk being available beginning in School Year (SY) 2017–2018. A Trump-era rule changed the standards (arguably in a manner inconsistent with the DGAs) until the rule was vacated by a U.S. District Court on procedural grounds.<sup>17</sup>

The Biden Administration has committed to improving the health and nutrition of students by promulgating regulations to align school meal standards with the goals of the latest DGAs.<sup>18</sup> On February 7, 2023, USDA published the *Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans*.<sup>19</sup> Under the proposed rule, flavored non-fat and low-fat milk (1%) would be subject to new proposed added sugar limits of no more than 10 grams of sugar per 8 fluid ounces, effective SY 2025–2026.<sup>20</sup> This guidance was based on research showing added sugars can increase risk factors associated with cardiovascular disease.<sup>21</sup> With milk being the leading source of added sugars in school meal programs, this new guidance is a step toward addressing the health concerns related to the consumption of added sugars. USDA’s proposed rule was open for public comment, and in

<sup>13</sup> U.S. Dept. of Agriculture & U.S. Dept. of Health & Hum. Svcs., Learn about the Process, Dietary Guidelines for Americans, <https://www.dietaryguidelines.gov/learn-about-process#step-4-develop-the-dietary-guidelines> (last visited June 6, 2023).

<sup>14</sup> 7 C.F.R. § 210.10; 7 C.F.R. § 220.8.

<sup>15</sup> Whole milk—or “full-fat” milk—is about 3.25–3.5% milk fat.

<sup>16</sup> Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 296, 124 Stat. 3183–3266 (2010).

<sup>17</sup> A 2017 interim final rule from the Trump Administration, as well as the 2018 final rule, allowed SFAs to offer flavored low-fat milk; however, a U.S. District Court vacated the 2018 final rule, returning standards to the 2012 final rule. Since the 2012 final rule did not allow schools to offer low-fat flavored milk, Congress reinstated the allowance to offer low-fat flavored milk through a Fiscal Year (FY) 2021 appropriations rider. Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans, 88 Fed. Reg. 8050 (Feb. 7, 2023) (to be codified at 7 C.F.R. pt. 210.215, 220, 225 and 226); Consolidated Appropriations Act, 2021, Pub. L. No. 116–260, § 789, 134 Stat. 1182, 1231 (2020).

<sup>18</sup> U.S. Dept. of Agriculture & U.S. Dept. of Health & Hum. Svcs., Work Under Way: About the Committee, Dietary Guidelines for Americans, <https://www.dietaryguidelines.gov/2025-advisory-committee>, (last visited June 6, 2023).

<sup>19</sup> Child Nutrition Programs, *supra* note 17.

<sup>20</sup> *Id.* at 8060.

<sup>21</sup> Miriam B. Vos et al., Added Sugars and Cardiovascular Disease Risk in Children: A Scientific Statement from the American Heart Association, 135 *Circulation* 1017–34 (2017); P.J. Moynihan & S.A.M. Kelly, Effect on caries of restricting sugars intake: systematic review to inform WHO guidelines. 93 *J. Dental Rsch.* 8–18 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3872848/>.

fact, the comment period was extended to ensure time for stakeholder input.<sup>22</sup>

H.R. 1147 MOVES AWAY FROM UNBIASED, SCIENCE-BASED  
RECOMMENDATIONS

H.R. 1147 amends the *Richard B. Russell National School Lunch Act* to allow for flavored and unflavored whole, reduced-fat (2%), low-fat (1%), and fat-free fluid milk as well as lactose-free fluid milk to be offered as part of a reimbursable meal in schools through the NSLP. As described above, currently, schools participating in the NSLP are allowed to offer unflavored or flavored low-fat milk (1%) and or fat-free milk.<sup>23</sup>

H.R. 1147 makes milk available in schools regardless of fat or added sugar content, both legislating nutrition standards and effectively disregarding the science-based recommendations made by the DGAs. Further, the bill excludes milk fat from classification as saturated fat for the purpose of measuring compliance with the allowable school nutrition saturated fat standards. This change was made because current regulations limit average saturated fat content of meals offered over a five-day school week to less than 10 percent of total calories, and the saturated fat of whole and 2% milk would likely exceed that limit.<sup>24</sup> H.R. 1147 also continues the present law requirement for a written statement from a licensed physician for fluid milk substitution, which can be a barrier for children who are unable to process lactose. As mentioned, the Biden Administration is also in the process of finalizing a rule to update nutrition standards and H.R. 1147 would undercut this comprehensive and transparent process.

H.R. 1147 COULD NEGATIVELY IMPACT CHILDREN’S HEALTH

H.R. 1147 fails to acknowledge that milk is a top source of saturated fat in American diets.<sup>25</sup> The American Heart Association consistently agrees that saturated fat raises “bad” cholesterol, a known cause of heart disease.<sup>26</sup> Additionally, according to the National Health and Nutritional Examination Survey, one in five children and adolescents, ages 6 to 19, have “at least one abnormal cholesterol measure.”<sup>27</sup> The DGAs, along with the American Heart Association<sup>28</sup> and the American Academy of Pediatrics,<sup>29</sup> recommend switching to low-fat (1%) and fat-free milk for children two years old and older. Additionally, fat-free and low-fat (1%) milk

<sup>22</sup> 88 Fed. Reg. 19229 (Mar. 31, 2023).

<sup>23</sup> Child Nutrition Programs, *supra* note 17, at 8059.

<sup>24</sup> 7 C.F.R. § 210.10.

<sup>25</sup> Physicians Committee for Responsible Medicine, *Health Concerns About Dairy*, <https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-about-dairy> (last visited on June 12, 2023).

<sup>26</sup> Am. Heart Assn., *Saturated Fat*, (Nov. 1, 2021), <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/fats/saturated-fats#:~:text=Should%20I%20eat%20them%20or,higher%20risk%20for%20heart%20disease>.

<sup>27</sup> Duong Nguyen et al., *Abnormal Cholesterol Among Children and Adolescents in the United States, 2011–2014*, Natl. Ctr. for Health Stats. Data Brief, (Dec. 2018), <https://www.cdc.gov/nchs/data/databriefs/DB228.pdf>.

<sup>28</sup> Am. Heart Assn., *Dietary Recommendations for Healthy Children*, (Apr. 16, 2018), <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/nutrition-basics/dietary-recommendations-for-healthy-children>.

<sup>29</sup> Anthony Porto & Rachel Drake, *Cow’s Milk Alternatives: Parent FAQs*, <https://www.healthychildren.org/English/healthy-living/nutrition/Pages/milk-allergy-foods-and-ingredients-to-avoid.aspx> (last updated June 2, 2022).

all provide slightly more nutrients, such as calcium, vitamins A and D, and potassium, than whole milk and reduced fat milk (2%), but with lower fat, saturated fat, cholesterol, and calories.<sup>30</sup> The American Heart Association,<sup>31</sup> the American College of Cardiology,<sup>32</sup> the Centers for Disease Control and Prevention,<sup>33</sup> and the World Health Organization<sup>34</sup> are all in agreement that replacing saturated fats with unsaturated fats reduces the risk of heart disease in both children and adults.

DEMOCRATIC AMENDMENTS OFFERED DURING MARKUP OF H.R. 1147

Committee Democrats did not offer any amendments during the markup of H.R. 1147.

CONCLUSION

Nutrition standards for school meal programs are best left to evidence-based recommendations from nutrition and public health experts. Instead of taking a comprehensive approach at improving federal child nutrition programs, H.R. 1147 dismisses the nutrition science that we depend on to improve the health of school-aged children across the country. For the reasons stated above, a majority of Committee Democrats opposed H.R. 1147 when the Committee on Education and the Workforce considered it on June 6, 2023. We urge the House of Representatives to do the same.

ROBERT C. “BOBBY” SCOTT,  
*Ranking Member.*  
 RAÚL M. GRIJALVA.  
 MARK TAKANO.  
 GREGORIO KILILI CAMACHO  
 SABLAN.  
 MARK DESAULNIER.  
 SUZANNE BONAMICI.  
 PRAMILA JAYAPAL.  
 HALEY M. STEVENS.  
 JAMAAL BOWMAN.

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<sup>30</sup> Am. Heart Assn., *Dairy Products—Milk, Yogurt, and Cheese, Heart Attack and Stroke Symptoms*, <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/nutrition-basics/dairy-products-milk-yogurt-and-cheese>. (last visited Apr. 16, 2018)

<sup>31</sup> Frank M. Sacks, et al., *Dietary Fats and Cardiovascular Disease: A Presidential Advisory From the American Heart Association*, 136 *Circulation* 1–23, (June 15, 2017), <https://www.ahajournals.org/doi/10.1161/CIR.0000000000000510>.

<sup>32</sup> Press Release, Am. Coll. of Cardiology, *Unsaturated Fats, High-Quality Carbs Lower Risk of Heart Disease*, (Sept. 28, 2015), <https://www.acc.org/About-ACC/Press-Releases/2015/09/28/13/58/Unsaturated-Fats-High-Quality-Carbs-Lower-Risk-of-Heart-Disease#:~:text=A%20study%20published%20today%20in,the%20risk%20of%20heart%20disease.>

<sup>33</sup> Ctrs. for Disease Control & Prevention, *Post-Core: Fats—Saturated, Unsaturated, and Trans Fat*, [https://www.cdc.gov/diabetes/prevention/pdf/posthandout\\_session2.pdf](https://www.cdc.gov/diabetes/prevention/pdf/posthandout_session2.pdf) (last visited June 6, 2023).

<sup>34</sup> World Health Org. *Healthy Diet*, (Apr. 29, 2020), <https://www.who.int/news-room/fact-sheets/detail/healthy-diet>.